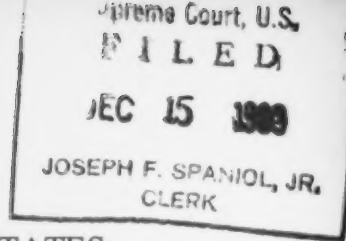


(3)
No. 89-270



IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1989

JOHN RICHARDSON,

Petitioner,

v.

CITY OF CHICAGO,

Respondent.

*ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT*

REPLY MEMORANDUM FOR PETITIONER

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1. We disagree with respondent's assertion that petitioner "resigned [from the plaintiff class] to settle his own claims" (Br. in Opp. 1, 4, 5.) As in *United Air Lines v. McDonald*, 432 U.S. 385 (1978), this claim of "settlement" may be "somewhat misleading." 432 U.S. at 393 n.14.

a. On February 21, 1986, the district court ordered that the case may proceed as a class action. (Pet.App. 26-29.) Thereafter, on June 12, 1986, the district court granted petitioner's motion for summary judgment on Count II, in which petitioner sought "a declaratory judgment in his favor and others similarly situated." (Pet.App. 30.)

b. When the district court granted summary judgment, finding that the challenged policy was unconstitutional,

petitioner was seeking compensatory damages of \$19.99. (Pet.App. 4.) Thereafter, the City of Chicago offered to resolve petitioner's individual damage claim by paying five thousand dollars. Petitioner accepted this offer. (Resp.App. 5.)

c. A litigant who, after obtaining an adjudication in his favor on liability, waives a trial on the amount of damages and accepts judgment for an amount of money far above the *ad damnum* of his complaint can hardly be said to have "settled" his claim. We agree that by accepting payment of five thousand dollars to resolve his damages claim, petitioner was precluded from challenging on appeal that aspect of the final judgment. *Deposit Guaranty National Bank v. Roper*, 445 U.S. 326, 333 (1978). But "[w]hen the District Court certified the propriety of the class action, the class of unnamed persons described in the certification acquired a legal status separate from the interest asserted by appellant." *Sosna v. Iowa*, 419 U.S. 393, 399 (1975). Resolution of petitioner's individual damage claim did not, as a matter of law, impair his ability to continue to represent the class in defending the district court's judgment.

2. Although the Seventh Circuit acknowledged that its decision in this case is in direct conflict with the rule applied by the Ninth Circuit (Pet.App. 15), respondent denies the existence of any conflict. (Br. in Opp. 10-12.) We disagree.

In *Smith v. City of Fontana*, 818 F.2d 1411 (9th Cir. 1987), the Ninth Circuit held that under *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983), if a plaintiff's claims for damages and declaratory relief are based on a single legal theory requirement development of the same facts, and if there is a live controversy between the parties for a damages claim,

then a federal court has jurisdiction to hear and decide a request for declaratory judgment. 818 F.2d at 1422-23. The Ninth Circuit noted that the plaintiff in this setting must establish all the facts necessary to support the claim for declaratory relief to secure damages and thus has a personal stake in the outcome of the declaratory claim. *Id.*

The Seventh Circuit expressly rejected the Ninth Circuit's reading of *City of Los Angeles v. Lyons*, *supra*. (Pet.App. 15-16.) Respondent's protestations to the contrary notwithstanding, this case squarely presents a conflict between the circuits about the scope of *City of Los Angeles v. Lyons*, *supra*.

For the reasons stated above and in our petition, it is respectfully submitted that the petition for a writ of certiorari should be granted.

December, 1989

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